

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

	X	
In re:	:	Case No. 08-03423-EE
	:	
WAREHOUSE 86, LLC,	:	Chapter 11
	:	
Debtor.	:	
	:	
	X	
SCK, INC. and RADIOSHACK CORPORATION,	:	Adv. Pro. No. _____
	:	
Plaintiffs	:	
	:	
v.	:	
	:	
WAREHOUSE 86, LLC,	:	
	:	
Defendant.	:	
	X	

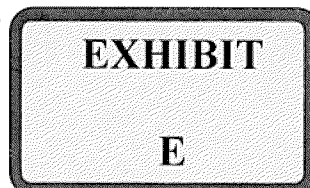
COMPLAINT FOR DECLARATORY JUDGMENT

NOW COMES SCK, Inc. f/k/a SC Kiosks, Inc. ("SCK") and RadioShack Corporation¹ ("Radioshack") (collectively with SCK, "Plaintiffs") and files this Complaint against Warehouse 86, LLC ("Defendant"), seeking a declaratory judgment that Plaintiffs are entitled to all of the Insurance Proceeds, as defined herein below, to the exclusion of Defendant, Defendant's bankruptcy estate and Defendant's creditors, and in support thereof, allege as follows:

Parties

1. SCK is a foreign corporation with its principal place of business located at Post Office Box 961090, Fort Worth, Texas 76161.

¹ SCK is a wholly-owned subsidiary of RadioShack.



2. RadioShack is a foreign corporation with a principal office address of 300 RadioShack Circle CF3, Fort Worth, Texas 76102.

3. Upon information and belief, Defendant is a foreign limited liability company with a principal office address of 8230 East Gary Road, Scottsdale, Arizona 85260, and may be served with process by service upon its registered agent, Ernest K. Strahan III, 5 River Bend Place, Suite D, Flowood, Mississippi 39232.

Jurisdiction and Venue

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. This matter is a core proceeding under 28 U.S.C. § 157(b)(2).

Facts

6. On November 4, 2008 (the "Petition Date"), Defendant commenced the underlying bankruptcy case by filing a voluntary petition for reorganization relief under chapter 11 of title 11 of the United States Code, as amended (the "Bankruptcy Code").

7. On December 11, 2008, Defendant sold substantially all of its assets to Kenneth A. May. Defendant no longer operates as a going concern.

8. Defendant is authorized to manage its remaining assets as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the bankruptcy case.

9. Prior to the Petition Date, SCK subleased to Defendant a certain warehouse located in Southaven, Mississippi (the "Southaven Warehouse"), along with a conveyor system and other equipment located therein (the "Subleased Equipment"), pursuant to a sublease, dated as of July 11, 2006 (the "Sublease"). A copy of the Sublease is attached as Exhibit A.

10. On February 5, 2008, a tornado struck the Southaven Warehouse causing severe damage to the building, leasehold improvements and the Subleased Equipment.

11. Separately, on February 11, 2008, while repairing the tornado damaged building, a welding subcontractor caused a fire to erupt in the Southaven Warehouse resulting in further damage to the building, leasehold improvements and the Subleased Equipment.

12. The combined damage to the Southaven Warehouse and the Subleased Equipment is estimated to be \$2,825,053, as evidenced by the interim report of McLarens Young International, attached as Exhibit B.

13. At the time of the tornado and the fire, Defendant carried a commercial property insurance policy (Policy No. 3A2-22-78---08) (the "Policy") with Employers Mutual Casualty Company a/k/a EMC Insurance Companies ("EMC") covering the building, business personal property and business income. A copy of the Policy is attached as Exhibit C.

14. SCK is a loss payee in the Policy.²

15. EMC, in accordance with the Policy, disbursed to SCK and Defendant a total of \$2,089,882.35 (the "Insurance Proceeds") for the tornado and fire losses.

16. On July 23, 2009, EMC issued a check in the amount of \$1,060,000 for the fire loss: \$1,000,000 for business personal property loss, \$50,000 for business income loss and \$10,000 for debris removal.

17. On August 12, 2009, EMC issued two checks in the total amount of \$1,029,882.35 for the tornado loss: \$974,982.35 for business personal property loss, \$50,000 for business interruption loss and \$4,900 for debris removal.

² While there are other loss payees or co-insureds in the Policy, pursuant to Defendant's Second Motion to Extend Exclusive Right to File and Obtain Confirmation of Plan (Dkt. #140), "[s]ince the Petition Date, Defendant has resolved the rights of all other named co-insureds previously listed under the Policy so that they are no longer parties in interest and will not have to be made parties to any proceeding to determine the rights to the [I]nsurance [P]roceeds under the Policy."

Case 09-00139-ee Doc 1-8 Filed 11/02/09 Entered 11/02/09 15:39:35 Desc
Exhibit C part 1 Page 1 of 22

EXHIBIT “C”

Case 09-00139-ee Doc 1-8 Filed 11/02/09 Entered 11/02/09 15:39:35 Desc

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* * * * * This transaction is affected by a manual change * * * * *

EMPLOYERS MUTUAL CASUALTY COMPANY

C H A N G E E N D O R S E M E N T

POLICY PERIOD: FROM 04/15/07 TO 04/15/08 *-----*

* POLICY NUMBER *

* 3 A 2 - 2 2 - 7 8 ---08 *

N A M E D I N S U R E D :

P R O D U C E R :

WAREHOUSE 86 LLC
 W86 PROPERTY HOLDINGS LLC
 ELECTRONIC TECHNOLOGIES INC
 PO BOX 16692
 JACKSON MS 39236-6692

MARCHETTI ROBERTSON & BRICKELL
 INSURANCE & BONDING AGENCY, INC
 1062 HIGHLAND COLONY PKWY-S 175
 PO BOX 3348
 RIDGELAND MS 39158-3348

D I R E C T B I L L

A G E N T : A H - 9 3 3 3

A G E N T P H O N E : 6 0 1 - 6 0 5 - 3 1 5 0

T H I S E N D O R S E M E N T C H A N G E S T H E P O L I C Y .
 P L E A S E R E A D I T C A R E F U L L Y .

* E N D O R S E M E N T E F F E C T I V E D A T E S : 1 1 / 0 8 / 0 7 T O 0 4 / 1 5 / 0 8 *

I N C O N S I D E R A T I O N O F T H E R E T U R N P R E M I U M
 T H E F O L L O W I N G C H A N G E S A R E A P P L I C A B L E T O T H I S P O L I C Y :

A M E N D I N G P E R S O N A L P R O P E R T Y L I M I T O N L O C 0 0 1 T O \$ 5 0 , 0 0 0 P E R A T T A C H E D
 S C H E D U L E .

R E T U R N P R E M I U M : \$ 2 6 9 . 0 0

P L A C E O F I S S U E : R I D G E L A N D , M S
 D A T E O F I S S U E : 1 1 / 3 0 / 0 7
 F O R M : I L 1 2 0 1 A (E D . 0 1 - 8 6)

C O U N T E R S I G N E D B Y :
 B P P 1 1 5 J J

(C O N T I N U E D)
 3 A 2 2 2 7 8 0 8 0 5

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EMPLOYERS MUTUAL CASUALTY COMPANY
WAREHOUSE 86 LLC

POLICY NO: 3A2-22-78---08

EFF DATE: 04/15/07

EXP DATE: 04/15/08

C H A N G E E N D O R S E M E N T
C O N T I N U E D

FORMS APPLICABLE:

CP0010(04/02), CP0030(04/02), CP0090(07/88), CP0127(03/96),
CP0140(07/06), CP1030(04/02), CP1218(06/95), CP7001A(01/86)*,
CP7007.1(10/00), CP7159(10/02), CP7313(01/04), CP8075(07/06),
CP9993(10/90), IL0119(01/07), IL0266(07/02), IL0282(07/02),
IL0415(04/98), IL0952(11/02), IL7050(09/90), IL7130A(04/01),
IL7131A(04/01)*, IL7306(08/98), IL8383.2(01/07), IL8384A(09/04)

Refer to prior distribution(s) for any forms not attached

PLACE OF ISSUE: RIDGELAND, MS

DATE OF ISSUE: 11/30/07

FORM: IL1201A (ED. 01-86)

COUNTERSIGNED BY:

BPP

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JJ

3A22278 0805

EMPLOYERS MUTUAL CASUALTY COMPANY

POLICY NUMBER: 3A2-22-78---08

Case 09-00139-ee Doc 1-8 Filed 11/02/09 Entered 11/02/09 15:39:35 Desc

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WAREHOUSE 86 LLC

EFF DATE: 11/08/07

EXP DATE: 04/15/08

C O M M E R C I A L P R O P E R T Y P O L I C Y
D E C L A R A T I O N S

=====

E N D O R S E M E N T S C H E D U L E

FORM	EDITION DATE	DESCRIPTION/ADDITIONAL INFORMATION	PREMIUM
CP0010	04-02	BLDG & PERSONAL PROP. COVERAGE FORM	
CP0030	04-02	BUS. INCOME & EXTRA EXPENSE COVERAGE	
CP0090	07-88	COMMERCIAL PROPERTY CONDITIONS	
CP0127	03-96	UTAH CHANGES	
CP0140	07-06	EXCL OF LOSS DUE TO VIRUS/BACTERIA	
CP1030	04-02	CAUSES OF LOSS SPECIAL FORM	
CP1218	06-95	LOSS PAYABLE PROVISIONS	
*CP7001A	01-86	COMMERCIAL PROPERTY SCHEDULE	
CP7007.1	10-00	COMM PROPERTY QUICK REFERENCE	
CP7159	10-02	BROADENED PROPERTY COVRG EXTENSION	
CP7313	01-04	EQUIPMENT PROTECTION ENDORSEMENT	
CP8075	07-06	POLICYHOLDER NOTICE	
CP9993	10-90	TENTATIVE RATE	
IL0119	01-07	MISSISSIPPI CHANGES	
IL0266	07-02	UT CHANGES - CANCELLATION/NONRENEWAL	
IL0282	07-02	MS CHANGES - CANCELLATION/NONRENEWAL	
IL0415	04-98	PROTECTIVE SAFEGUARDS	
IL0952	11-02	CAP/LOSSES/CERTIFD ACTS OF TERRORISM	
IL7050	09-90	RENEWAL PREMIUM PAYMENT ENDORSEMENT	
IL7130A	04-01	NAMED INSURED ENDORSEMENT	
*IL7131A	04-01	COMM'L POLICY ENDORSEMENT SCHEDULE	
IL7306	08-98	EXCLUSION OF CERTAIN COMPUTER LOSSES	
IL8383.2	01-07	DISCLOSURE NOTICE OF TERRORISM COVG	
		SCHEDULE - Part 1	
		A. Premium through end of year 12/31/07	\$ 37
		B. Premium beyond the date specified above	\$ 15
IL8384A	09-04	TERRORISM NOTICE	

DATE OF ISSUE: 11/30/07

FORM: IL7131A (ED. 04-01)

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EMPLOYERS MUTUAL CASUALTY COMPANY

N A M E D I N S U R E D E N D O R S E M E N T

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POLICY PERIOD: FROM 04/15/07 TO 04/15/08 * POLICY NUMBER *
* 3 A 2 - 2 2 - 7 8 ---08 *

N A M E D I N S U R E D :

P R O D U C E R :

WAREHOUSE 86 LLC
W86 PROPERTY HOLDINGS LLC
ELECTRONIC TECHNOLOGIES INC
PO BOX 16692
JACKSON MS 39236-6692

MARCHETTI ROBERTSON & BRICKELL
INSURANCE & BONDING AGENCY, INC
1062 HIGHLAND COLONY PKWY-S 175
PO BOX 3348
RIDGELAND MS 39158-3348

DIRECT BILL

AGENT: AH-9333

AGENT PHONE: 601-605-3150

T H I S E N D O R S E M E N T C H A N G E S T H E P O L I C Y .
P L E A S E R E A D I T C A R E F U L L Y .

* ENDORSEMENT EFFECTIVE DATES: 11/08/07 TO 04/15/08 *

IT IS HEREBY AGREED AND UNDERSTOOD THAT THE NAMED INSURED
IS AMENDED TO READ AS FOLLOWS:

1ST NAMED INSURED:
WAREHOUSE 86 LLC

NO. 02:
W86 PROPERTY HOLDINGS, LLC

NO. 03:
ELECTRONIC TECHNOLOGIES, INC.

PLACE OF ISSUE: RIDGELAND, MS
DATE OF ISSUE: 11/30/07
FORM: IL7130A (ED. 04-01)

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EMPLOYERS MUTUAL CASUALTY COMPANY

PRIOR POLICY: 3A2-22-78

C O M M E R C I A L P R O P E R T Y D E C L A R A T I O N S

POLICY PERIOD: FROM 04/15/07 TO 04/15/08

* POLICY NUMBER *

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* 3 A 2 - 2 2 - 7 8 --- 08 *

N A M E D I N S U R E D :

P R O D U C E R :

WAREHOUSE 86 LLC
W86 PROPERTY HOLDINGS LLC
ELECTRONIC TECHNOLOGIES INC
PO BOX 16692
JACKSON MS 39236-6692

MARCHETTI ROBERTSON & BRICKELL
INSURANCE & BONDING AGENCY, INC
1062 HIGHLAND COLONY PKWY-S 175
PO BOX 3348
RIDGELAND MS 39158-3348

DIRECT BILL

AGENT: AH-9333

AGENT PHONE: 601-605-3150

INSURED IS: LLC

SEE ATTACHED SCHEDULE FOR DESCRIPTION OF LOCATIONS,
SPECIAL INTERESTS AND DEDUCTIBLES

C O V E R A G E S P R O V I D E D	P R E M I U M
BUILDING	\$ 5,635.00
PERSONAL PROPERTY	\$ 9,077.00
BUSINESS INCOME	\$ 540.00
TOTAL PROPERTY PREMIUM	\$ 15,252.00

FORMS APPLICABLE:

CP0010(04/02), CP0030(04/02), CP0090(07/88), CP0127(03/96),
CP0140(07/06), CP1030(04/02), CP1218(06/95), CP7001A(01/86)*,
CP7007.1(10/00), CP7159(10/02), CP7313(01/04), CP8075(07/06),
CP9993(10/90), IL0119(01/07), IL0266(07/02), IL0282(07/02),
IL0415(04/98), IL0952(11/02), IL7050(09/90), IL7130A(04/01),
IL7131A(04/01)*, IL7306(08/98), IL8383.2(01/07), IL8384A(09/04)

Refer to prior distribution(s) for any forms not attached

DATE OF ISSUE: 11/30/07 (BPP)
FORM: CP7000A ED. 1-86 BPP 03/20/07 115 JJ 3A22278 0805

EMPLOYERS MUTUAL CASUALTY COMPANY POLICY NO: 3A2-22-78---08
WAREHOUSE 86 LLC EFF DATE: 11/08/07 EXP DATE: 04/15/08

C O M M E R C I A L P R O P E R T Y S C H E D U L E

LOC 001 108 HAYDEN ST DESCRIPTION: 1 STORY NONCOMB BLDG
INDIANOLA, MS. IN PROTECTION CLASS 07
OCCUPANCY: OFFICE FURNITURE STORAGE

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38751-9700

AND DISTRIBUTION

DEDUCTIBLE PER OCCURRENCE: \$ 1,000 ON ALL COVERED CAUSES OF LOSS
 FOR INSPECTION CONTACT: BOYLES MOAK BRICKELL 601-605-4114 AGT
 PROTECTIVE SAFEGUARDS: P-1

ITEM	COVERAGE	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	SPEC* INT COINS	OPTIONAL COVERAGES
01	BUILDING	\$ 1,230,000	SPECIAL	04	80% REPLACEMENT COST
02	PERSONAL PROPERTY OF YOUR BUSINESS OFFICE	\$ 50,000	SPECIAL	!	80% REPLACEMENT COST
	CONTENTS & COMPUTERS ONLY		!	!	!

LOC 003 STE 110
 481 AIRPORT INDUSTRIAL DR
 SOUTHAVEN, MS.
 38671-5879

DESCRIPTION: 1 STORY JSTD MAS BLDG
 IN PROTECTION CLASS 05
 OCCUPANCY: INDUSTRIAL RACKING AND
 CONVEYOR SYSTEMS

DEDUCTIBLE PER OCCURRENCE: \$ 1,000 ON ALL COVERED CAUSES OF LOSS, EXCEPT
 72 HOURS ON BUSINESS INCOME
 FOR INSPECTION CONTACT: BOYLES MOAK BRICKELL 601-605-4114 AGT
 PROTECTIVE SAFEGUARDS: P-1

ITEM	COVERAGE	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	SPEC* INT COINS	OPTIONAL COVERAGES
01	PERSONAL PROPERTY OF YOUR BUSINESS	\$ 1,000,000	SPECIAL	01	80% REPLACEMENT COST
			!	03	!
			!	05	!
02	BUSINESS INCOME INCLUDING RENTAL VALUE	\$ 50,000	SPECIAL	!	MONTHLY INDEM 1/6
			!	!	!

DATE OF ISSUE: 11/30/07 (BPP) (CONTINUED)
 FORM: CP7001A ED. 1-86 BPP 03/20/07 115 JJ 3A22278 0805

PAGE NO: 2
 EMPLOYERS MUTUAL CASUALTY COMPANY POLICY NO: 3A2-22-78---08
 WAREHOUSE 86 LLC EFF DATE: 11/08/07 EXP DATE: 04/15/08

C O M M E R C I A L P R O P E R T Y S C H E D U L E

LOC 004 986 W 2ND ST
 OGDEN, UT.
 84404-1324

DESCRIPTION: 1 STORY NONCOMB BLDG
 IN PROTECTION CLASS 03
 OCCUPANCY: WAREHOUSE

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LOC DESCRIPTION: BLDG 12A

DEDUCTIBLE PER OCCURRENCE: \$ 1,000 ON ALL COVERED CAUSES OF LOSS, EXCEPT
72 HOURS ON BUSINESS INCOME
FOR INSPECTION CONTACT: BOYLES MOAK BRICKELL 601-605-4114 AGT

ITEM	COVERAGE	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	SPEC*	INT	COINS	OPTIONAL COVERAGES
01	PERSONAL PROPERTY OF YOUR BUSINESS	\$ 150,000	SPECIAL	!	80%	!	REPLACEMENT COST
02	BUSINESS INCOME INCLUDING RENTAL VALUE	\$ 50,000	SPECIAL	!	!	!	MONTHLY INDEM 1/6

LOC 005 5 RIVER BEND PL STE D DESCRIPTION: 1 STORY JSTD MAS BLDG
FLOWOOD, MS. IN PROTECTION CLASS 05
39232-7618 OCCUPANCY: WAREHOUSE

DEDUCTIBLE PER OCCURRENCE: \$ 1,000 ON ALL COVERED CAUSES OF LOSS
FOR INSPECTION CONTACT: BOYLES MOAK BRICKELL 601-605-4114 AGT

ITEM	COVERAGE	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	SPEC*	INT	COINS	OPTIONAL COVERAGES
01	PERSONAL PROPERTY OF YOUR BUSINESS	\$ 5,000	SPECIAL	!	80%	!	REPLACEMENT COST

*SPECIAL INTEREST

SPEC.
INT. NO. 01 LOSS PAYEE - LOSS PAYABLE
SC KIOSKS, INC.
300 RADIOSHACK CIRCLE MS CF6-314
FORTWORTH, TX. 76102-1964

SPEC.
INT. NO. 03 LOSS PAYEE - LOSS PAYABLE
GENERAL ELECTRIC CAPITAL CORP.
16479 DALLAS PARKWAY NO. 300
ADDISON, TX. 75001-2512

DATE OF ISSUE: 11/30/07 (BPP) (CONTINUED)
FORM: CP7001A ED. 1-86 BPP 03/20/07 115 JJ 3A22278 0805

PAGE NO: 3
EMPLOYERS MUTUAL CASUALTY COMPANY POLICY NO: 3A2-22-78---08
WAREHOUSE 86 LLC EFF DATE: 11/08/07 EXP DATE: 04/15/08

COMMERCIAL PROPERTY SCHEDULE

SPEC.
INT. NO. 04 MORTGAGEE
TRUSTMARK NATIONAL BANK
P O BOX 291
JACKSON, MS. 39205

SPEC.
INT. NO. LOSS PAYEE - LOSS PAYABLE

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05 WELLS FARGO FINANCIAL LEASING, INC ISA
CAPITAL SQUARE 400 LOCUST STREET STE 500
DES MOINES, IA. 50309
REFERENCE NO: COPIER

INCLUDES COPYRIGHTED MATERIAL OF ISO COMMERCIAL RISK SERVICES, INC. WITH ITS
PERMISSION.

COPYRIGHT, ISO COMMERCIAL RISK SERVICES, INC. 1983, 1984

DATE OF ISSUE: 11/30/07 (BPP)

FORM: CP7001A ED. 1-86

BPP

03/20/07

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JJ

3A22278 0805

JJ 08/13/09 10:03:32

COMMERCIAL PROPERTY
CP 00 10 04 02

BUILDING AND PERSONAL PROPERTY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section H. – Definitions.

A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property, as used in this Coverage Part, means the type of property described in this Section, A.1., and limited in A.2., Property Not Covered, if a Limit of Insurance is shown in the Declarations for that type of property.

a. Building, meaning the building or structure described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
 - (a) Machinery and
 - (b) Equipment;
- (4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:
 - (a) Fire extinguishing equipment;
 - (b) Outdoor furniture;
 - (c) Floor coverings; and
 - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;
- (5) If not covered by other insurance:
 - (a) Additions under construction, alterations and repairs to the building or structure;

- (b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure.

b. Your Business Personal Property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises, consisting of the following unless otherwise specified in the Declarations or on the Your Business Personal Property – Separation of Coverage form:

- (1) Furniture and fixtures;
- (2) Machinery and equipment;
- (3) "Stock";
- (4) All other personal property owned by you and used in your business;
- (5) Labor, materials or services furnished or arranged by you on personal property of others;
- (6) Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
 - (a) Made a part of the building or structure you occupy but do not own; and
 - (b) You acquired or made at your expense but cannot legally remove;
- (7) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property of Others.

c. Personal Property Of Others that is:

- (1) In your care, custody or control; and
- (2) Located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

However, our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

2. Property Not Covered

Covered Property does not include:

- a. Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;
- b. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;
- c. Automobiles held for sale;
- d. Bridges, roadways, walks, patios or other paved surfaces;
- e. Contraband, or property in the course of illegal transportation or trade;
- f. The cost of excavations, grading, backfilling or filling;
- g. Foundations of buildings, structures, machinery or boilers if their foundations are below:
 - (1) The lowest basement floor; or
 - (2) The surface of the ground, if there is no basement;
- h. Land (including land on which the property is located), water, growing crops or lawns;
- i. Personal property while airborne or waterborne;
- j. Bulkheads, pilings, piers, wharves or docks;
- k. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;
- l. Retaining walls that are not part of a building;
- m. Underground pipes, flues or drains;

n. Electronic data, except as provided under Additional Coverages – Electronic Data. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This Paragraph n., does not apply to your "stock" of prepackaged software.

- o. The cost to replace or restore the information on valuable papers and records, including those which exist as electronic data. Valuable papers and records include but are not limited to proprietary information, books of account, deeds, manuscripts, abstracts, drawings and card index systems. Refer to the Coverage Extension for Valuable Papers And Records (Other Than Electronic Data) for limited coverage for valuable papers and records other than those which exist as electronic data.
- p. Vehicles or self-propelled machines (including aircraft or watercraft) that:
 - (1) Are licensed for use on public roads; or
 - (2) Are operated principally away from the described premises.

This paragraph does not apply to:

- (a) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;
- (b) Vehicles or self-propelled machines, other than autos, you hold for sale;
- (c) Rowboats or canoes out of water at the described premises; or
- (d) Trailers, but only to the extent provided for in the Coverage Extension for Non-Owned Detached Trailers.

q. The following property while outside of buildings:

- (1) Grain, hay, straw or other crops;
- (2) Fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, signs (other than signs attached to buildings), trees, shrubs or plants (other than "stock" of trees, shrubs or plants), all except as provided in the Coverage Extensions.

3. Covered Causes Of Loss

See applicable Causes of Loss Form as shown in the Declarations.

4. Additional Coverages

a. Debris Removal

- (1) Subject to Paragraphs (3) and (4), we will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) Debris Removal does not apply to costs to:
 - (a) Extract "pollutants" from land or water; or
 - (b) Remove, restore or replace polluted land or water.
- (3) Subject to the exceptions in Paragraph (4), the following provisions apply:
 - (a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.
 - (b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.
- (4) We will pay up to an additional \$10,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:

(a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.

(b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

Therefore, if (4)(a) and/or (4)(b) apply, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$10,000.

(5) Examples

The following examples assume that there is no coinsurance penalty.

Example #1

Limit of Insurance	\$ 90,000
Amount of Deductible	\$ 500
Amount of Loss	\$ 50,000
Amount of Loss Payable	\$ 49,500
	(\$50,000 - \$500)
Debris Removal Expense	\$ 10,000
Debris Removal Expense Payable	\$ 10,000
	(\$10,000 is 20% of \$50,000)

The debris removal expense is less than 25% of the sum of the loss payable plus the deductible. The sum of the loss payable and the debris removal expense (\$49,500 + \$10,000 = \$59,500) is less than the Limit of Insurance. Therefore the full amount of debris removal expense is payable in accordance with the terms of Paragraph (3).

Example #2

Limit of Insurance	\$ 90,000
Amount of Deductible	\$ 500
Amount of Loss	\$ 80,000
Amount of Loss Payable	\$ 79,500
	(\$80,000 - \$500)
Debris Removal Expense	\$ 30,000
Debris Removal Expense Payable	
Basic Amount	\$ 10,500
Additional Amount	\$ 10,000

The basic amount payable for debris removal expense under the terms of Paragraph (3) is calculated as follows: \$80,000 (\$79,500 + \$500) x .25 = \$20,000; capped at \$10,500. The cap applies because the sum of the loss payable (\$79,500) and the basic amount payable for debris removal expense (\$10,500) cannot exceed the Limit of Insurance (\$90,000).

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense (\$30,000) exceeds 25% of the loss payable plus the deductible (\$30,000 is 37.5% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$30,000 = \$109,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$10,000, the maximum payable under Paragraph (4). Thus the total payable for debris removal expense in this example is \$20,500; \$9,500 of the debris removal expense is not covered.

b. Preservation Of Property

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss or damage to that property:

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the loss or damage occurs within 30 days after the property is first moved.

c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000 for your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

No Deductible applies to this Additional Coverage.

d. Pollutant Clean Up And Removal

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay under this Additional Coverage for each described premises is \$10,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this policy.

e. Increased Cost Of Construction

- (1) This Additional Coverage applies only to buildings to which the Replacement Cost Optional Coverage applies.
- (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with enforcement of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in e.(3) through e.(9) of this Additional Coverage.

- (3) The ordinance or law referred to in e.(2) of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises, and is in force at the time of loss.
 - (4) Under this Additional Coverage, we will not pay any costs due to an ordinance or law that:
 - (a) You were required to comply with before the loss, even when the building was undamaged; and
 - (b) You failed to comply with.
 - (5) Under this Additional Coverage, we will not pay for:
 - (a) The enforcement of any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or
 - (b) Any costs associated with the enforcement of an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.
 - (6) The most we will pay under this Additional Coverage, for each described building insured under this Coverage Form, is \$10,000 or 5% of the Limit of Insurance applicable to that building, whichever is less. If a damaged building is covered under a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay under this Additional Coverage, for that damaged building, is the lesser of: \$10,000 or 5% times the value of the damaged building as of the time of loss times the applicable coinsurance percentage.
The amount payable under this Additional Coverage is additional insurance.
 - (7) With respect to this Additional Coverage:
 - (a) We will not pay for the Increased Cost of Construction:
 - (i) Until the property is actually repaired or replaced, at the same or another premises; and
 - (ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.
 - (b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e.(6) of this Additional Coverage, is the increased cost of construction at the same premises.
 - (c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e.(6) of this Additional Coverage, is the increased cost of construction at the new premises.
 - (8) This Additional Coverage is not subject to the terms of the Ordinance or Law Exclusion, to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.
 - (9) The costs addressed in the Loss Payment and Valuation Conditions, and the Replacement Cost Optional Coverage, in this Coverage Form, do not include the increased cost attributable to enforcement of an ordinance or law. The amount payable under this Additional Coverage, as stated in e.(6) of this Additional Coverage, is not subject to such limitation.
- f. Electronic Data**
- (1) Under this Additional Coverage, electronic data has the meaning described under Property Not Covered – Electronic Data.